

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: RE: **Ex. 7(A)**

Thanks! I will work on updating this now.

Sarah Rae

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

Rae.Sarah@epa.gov

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Sent: Wednesday, September 04, 2019 1:10 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: **Ex. 7(A)**

Sarah –

Attached is a (one of many...) cheat sheet that has the language james provided re the SEP's benefits and impacts.

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Sent: 9/4/2019 2:46:44 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Monthly Air Attorney Enforcement Call

Ex. 6 Personal Privacy (PP)

Now on to a less pleasant topic, how is the pulling together of some cognizable guidance for DOJ's new SEP policy going? Is the topic ripe for a summary on tomorrow's EPA air attorney call?

I heard through the grapevine that the AAG has some protocols in place for mitigation projects now. If you didn't hear about that, give me a buzz.

Sabrina Argentieri
Attorney-Advisor
U.S. EPA Office of Civil Enforcement
Air Enforcement Division
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 564-8953

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 8:45:22 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

OMG that didn't even cross my mind!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 4:37 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Thx, RK, good idea to ask the question!

Sent from my iPhone

On Aug 27, 2019, at 4:25 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

George -

Ex. 5 Deliberative Process (DP)

Rosemarie

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: August 27, 2019 at 3:06:13 PM EDT
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>
Cc: "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>
Subject: FYI TheHill.com: Trump admin erases key environmental enforcement tool

From TheHill.com: <https://thehill.com/policy/energy-environment/458317-trump-admin-erases-key-environmental-enforcement-tool> Note that it says EPA did not "return a request for comment."

The Department of Justice (DOJ) is doing away with an enforcement tool that has been used in the past to get states and localities into compliance with environmental laws.

Assistant Attorney General Jeffrey Bossert Clark announced Wednesday in an internal letter obtained by The Hill that the agency will no longer utilize Supplemental Environmental Projects (SEPs) in settlements with state and local government polluters.

The enforcement tool is often offered in settlements with industries and states that violate environmental laws such as the Clean Water Act and allows them the opportunity to pay

lower fines by instituting actions such as environmental cleanups or infrastructure upgrades.

The DOJ letter addressed to environmental enforcement staff criticized the tool, used frequently under the Obama administration, as going "beyond what is required under federal, state, or local laws."

"By definition, a SEP goes beyond what is required under federal, state, or local laws ... and thus exceeds what could be obtained through agency enforcement authority or by litigating a matter to judgment," Clark wrote.

E&E News was the first to report on the letter.

Critics, including some congressional Republicans, have argued the SEP program chooses clean energy favorites by putting revenue into the pockets of unrelated industries.

For example, in the 2016 landmark Volkswagen emissions cheating case, the car company settled with the EPA for \$14.7 billion for its diesel vehicles violating Clean Air Act regulations. As part of that settlement, \$2.7 billion was paid toward a nitrogen oxide reduction program, giving states money toward a clean transportation program including electric vehicles.

House lawmakers in 2018 attempted to pass the "Stop Settlement Slush Funds Act," which would have prohibited SEPs and other third-party payments from being paid under environmental settlements. The bill was never taken up in the Senate, but it was referenced in the DOJ memo.

In most instances where entities are charged with failing to comply with environmental standards, the dispute is resolved through a settlement or consent decree with the DOJ. Both typically include some sort of monetary penalty. Critics have also argued that SEPs limit the dollar amount owed to the Treasury Department through those settlements by redirecting dollars to other indirect areas.

"SEPs are debated devices that many members of Congress and academic commentators view as mechanisms for sidestepping the power of the purse," the DOJ memo reads.

"SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General's November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations," it continues.

The directive is the latest policy change to come from the Trump administration regarding polluter enforcement. EPA Administrator Andrew Wheeler as well as leadership at the EPA's Office of Enforcement and Compliance Assurance (OCEA) have been vocal in their preference for pollution mitigation efforts over direct enforcement. That preference is reflected in the agency's dwindling annual enforcement data. OCEA has also introduced in the past year a series of changes to its polluter self-audit program, including one developed specifically for the oil and gas industry.

The policy also appears to build off a 2018 memo by then-Attorney General Jeff Sessions, who said the settlements deprived localities of the ability to decide their own policy issues.

Eric Schaeffer, executive director of the Environmental Integrity Project and a former director of the EPA's Office of Civil Enforcement, said the directive is "consistent" with the Trump administration's environmental approach but argues it also has embraced the tool to some extent.

"They've argued its 'coercive,' and some of that comes from right-wing bloggers and groups like Competitive Enterprise Institute. That explains why they don't want to raise the concept with industry. On the other hand, they seem quite happy to give the industry credit for SEP's that don't really seem to pass muster under the existing policy or under the argument we heard from Republicans in the House that penalty dollars aren't supposed to be diverted to SEPs," Schaeffer told The Hill.

An employee within the EPA's enforcement office likened the SEP directive to a "chill" in the agency.

"Over many years there have been a lot of good projects in communities that benefit the environment beyond putting money in the Treasury. And right now there's a real chill," the source said.

The EPA did not return a request for comment on the SEP policy change

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 8:05:47 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Thank you!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 3:06 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: FYI TheHill.com: Trump admin erases key environmental enforcement tool

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The EPA did not return a request for comment on the SEP policy change

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 2:59:22 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: XPS General 9am

Of course. I'm in meetings until 11:45.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:58 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Can we talk?

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:37 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

Ex. 5 Deliberative Process (DP)

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:34 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Ex. 5 Deliberative Process (DP)

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:24 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

I'm not following – were you tasked with writing talking points for the EDRC call?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:14 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Actually, I was annoyed at having wasted time and effort struggling with this, which is very tricky.... And ending up just being out of the loop!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:12 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

No problem.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:53 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: XPS General 9am

Shoot, I didn't come to general cause it wasn't on agenda. Have been typing away trying to find the right message.

Sent from my iPhone

On Aug 27, 2019, at 9:43 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

FYI – SEPs on EDRC call tomorrow. Susan will give update

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:09 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Phew! So happy to hear.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 9:08 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

Much better!! Thank you!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:03 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: XPS General 9am

How're you feeling?

Sent from my iPhone

On Aug 27, 2019, at 8:38 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

AGENDA
XPS General 8/27/19
Call in number 1 (202) 991-0477 Conference ID 2188530

1. Accomplishments
2. Penalty Inflation Workgroup
3. Agency Financial Report
4. Region 8-OCE Lean Check-In -- 8/28 (1:00-2:00)
5. Tribal UST Pilot
6. Informal Package
7. Chesapeake
8. Management and Personnel

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Sent: 8/27/2019 1:36:01 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: DOJ Muni SEP (or no SEP) Policy

Normally, yes. But I don't want to add days back on to the calendar right now . . .

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:35 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Re: DOJ Muni SEP (or no SEP) Policy

You wish it was the beginning of summer, not the end? ..)

Sent from my iPhone

On Aug 27, 2019, at 9:34 AM, Argentieri, Sabrina <argentieri.sabrina@epa.gov> wrote:

Yes! No idea where June came from.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:29 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Re: DOJ Muni SEP (or no SEP) Policy

Sept 5?

Sent from my iPhone

On Aug 27, 2019, at 9:18 AM, Argentieri, Sabrina <argentieri.sabrina@epa.gov> wrote:

Thursday, June 5th at 2:30 ET.

I feel like a journalist looking for the scoop. I hope it is well-timed, because really, I just want topics that won't bore my audience. ☺

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:16 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: RE: DOJ Muni SEP (or no SEP) Policy

When is the call? Things are still developing, in terms of instructions and guidance. It may be premature, or well-timed.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Sent: Tuesday, August 27, 2019 9:13 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: DOJ Muni SEP (or no SEP) Policy

Good morning, maybe.

I'm lining up topics for the monthly internal air enforcement attorneys call. Thinking about putting the DOJ memo re muni SEPs on the agenda. Do you know of someone at DOJ who I can ask to give a 20 minute presentation? It would be good to also have you provide an update on what's been happening with SEPs in general over the last month – but I won't put that on you if the thought makes you shudder.

Sabrina Argentieri
Attorney-Advisor
U.S. EPA Office of Civil Enforcement
Air Enforcement Division
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 564-8953

Message

From: Brown, Stephanie [Brown.Stephanie@epa.gov]
Sent: 8/23/2019 12:28:49 PM
To: Miles, James [miles.james@epa.gov]; Baney, Tony [Baney.Tony@epa.gov]; Presler, Amos [presler.amos@epa.gov]
CC: Sullivan, Greg [Sullivan.Greg@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: SEP Limitations— Fwd: The Morning Headlines from InsideEPA.com -- August 23, 2019

Hello. FYI. Also discussed potential for additional limitations.

=====

DOJ Narrows Use Of SEPs In Municipal Settlements, Eyes Further Limits

August 22, 2019

The Justice Department (DOJ) is further scaling back use of supplemental environmental projects (SEPs) in settlements with local government agencies, and signaling possible additional limits in the future, measures that are likely to draw opposition from municipal groups, who favor SEPs in consent decrees to mitigate penalties. In an **Aug. 21 memo**, Assistant Attorney General for Environment and Natural Resources Jeffrey Bossert Clark rejected claims that a 2018 water infrastructure law allows the use of SEPs and renewed prior requirements that settlements that include SEPs must win top-level approval.

But he also issued additional criteria that the memo says will apply to “rare” case-by-case approval of SEPs, characterizing the criteria as “interim” while DOJ continues a broader review of the issue.

Clark’s memo, which was first reported by *E&E News*, builds on a November 2018 policy from then-Attorney General Jeff Sessions specifying that settlements with municipal entities with SEPs require approval from the associate attorney general of DOJ’s Environment and Natural Resources Division (ENRD).

As such, the memo serves as further confirmation of a Trump administration shift away from prior assurances DOJ had provided municipal attorneys that broader DOJ efforts to limit SEPs would generally not target settlements with local governments.

As *Inside EPA* first reported, industry attorneys had raised concerns that such a policy may be in the works as **DOJ had been rejecting** SEPs in settlements with local government agencies.

And one attorney familiar with the issue says the memo’s reasoning will also be closely watched to the extent it both implements and foreshadows efforts to limit SEPs, not just with municipalities, but more broadly in enforcement settlements.

Critics of SEPs claim that their flaws include enabling “sweetheart deals” with environmentalists and allowing enforcement efforts to go beyond what would otherwise be obtainable under existing laws.

But SEP defenders argue that they have often been crucial tools in achieving otherwise difficult-to-negotiate agreements with both governments and private industry, and that the inability to use them could simply spur more litigation and higher enforcement penalties for both municipal governments and other defendants.

EPA’s SEP policy “allows for a consent decree to include a SEP to mitigate a civil penalty or stipulated penalties,” the National Association of Clean Water Agencies (NACWA), a group that represents municipal water systems, said in a **statement** responding to *Inside EPA*’s initial reports. “SEPs are an important way for a clean water agency to use funds locally that would otherwise go to the Federal Treasury.”

It adds that NACWA has been engaged with EPA regarding this development “and confirmed that the Agency remains in favor of the use of SEPs.”

America’s Water Infrastructure Act

Beginning with a 2017 Sessions memo, the Trump administration has sought to limit use of SEPs in settlement. Sessions’ June 2017 memo broadly banned settlements that include payments to third parties, and a January 2018 memo from then-acting ENRD chief Jeff Woods applied the 2017 memo to DOJ’s environment division while including exceptions to the payment ban in response to industry blowback.

A November 2018 DOJ policy barred use of consent decrees to achieve “general policy goals or to extract greater or different relief from the defendant than could be obtained through agency enforcement authority or by litigating the matter to judgment.”

DOJ in its new memo, “Using Supplemental Environmental Projects (‘SEPs’) in Settlements with State and Local Governments,” targets what it says are recent claims by SEP defenders, including municipalities, that the 2018 America’s Water Infrastructure Act (AWIA) approved use of SEPs when it authorized municipalities to streamline Clean Water Act compliance obligations through integrated planning.

AWIA, which President Donald Trump signed into law Oct. 23, 2018, included provisions addressing CWA infrastructure funding but did not address integrated planning. The **Water Infrastructure Improvement Act**, which Congress passed in late 2018 and Trump signed in January, codified EPA’s integrated planning policy and requires EPA to promote the use of “green infrastructure” in a variety of settings, including enforcement. Green infrastructure projects sometimes have been included as SEPs in EPA and DOJ enforcement agreements. The memo also disputes the notion that SEPs are excluded from DOJ review because EPA will agree to them in non-judicial administrative settlements.

“For the reason’s explained herein, these arguments that SEPs should be exempted from the November 2018 Policy are unpersuasive,” writes Bossert Clark, noting with respect to the 2018 water law that it does not mention SEPs in its text. “[T]he language of the 2018 Clean Water Act amendment is far from clear.”

In absence of such clear intent, the memo argues, SEPs intrude on Congress’s constitutional power of appropriations, as well as the Miscellaneous Receipts Act and Anti-Deficiency Act, by potentially reducing monetary penalties that might otherwise flow into the federal Treasury.

And his language on this point embraces claims by critics that would apply to SEPS more broadly -- not just in agreements with local governments --- expressing doubt that if Congress had intended to allow SEPs as devices to “circumvent” the Miscellaneous Receipts Act, it would not have done so without mentioning SEPs by name. Bossert Clark also argues that reading the 2018 CWA amendments to override the 2018 policy would “intrude on the authority of the attorney general to control and resolve litigation, he also offers “sound public policy” reasons for disapproving SEPs in cases involving government defendants, including “ensuring that local officials are held accountable for using local taxpayer funds on otherwise on required projects, without clear authorization state or municipal law to do so.”

And other language appears to take a swipe at SEPs not just in the context of judicial settlements, but EPA administrative settlements, as Bossert Clark pushes back against arguments from defenders that SEPs should be excluded from the reach of the November 2018 DOJ review policy because they are part of the agency’s enforcement authority.

“EPA lacks the enforcement authority to extract a SEPs from a defendant in any setting. This is true whether that setting is an administrative or a judicial one.”

Interim Step

A memo footnote also telegraphs that the document is an interim step to broader SEP policy changes. “I am considering revocation of (or revisions to) the January 2018 memorandum to make it more closely adhere to the November 2018 policy,” Bossert Clark says, as well as to the legislative aims of legislation known as the “Stop Settlement Slush Funds bill.”

“Revisions may include a clarification that the prohibition in the Attorney General’s 2017 policy payments to third parties includes in-kind payments such as those in SEPs.”

And the new DOJ memo also specifies several additional requirements for case-by-case DOJ approval of SEPs with government entities -- beyond those already stated in the November 2018 and June 2017 Sessions policies -- that apply if EPA seeks exceptions to a general prohibition on SEP, during an “interim period” while the broader review of SEP policy is underway.

The criteria include that SEPs are “discrete projects” representing “a small component of the overall settlement and be included only as “a last resort.”

SEPs negotiated before issuance of the 2018 policy require EPA to demonstrate that removal of a SEP from a “nearly completed agreement” would jeopardize the deal or harm “the interests of the United States.”

And SEPs negotiated after issuance of the November 2018 Policy require a demonstration that settlement would not be possible without them.

Additional criteria specify that the SEPS should provide “broad benefits to the community, not individuals,” and that a government defendant “should certify that the SEPs do not violate any direct or implied restriction imposed by local, state or federal law.”

“Even if the proposed SEPs satisfy these limitations, there is no guarantee that I will recommend approval of a settlement with the state or local government that include SEPs,” Bossert Clark continues.

“The bottom line is that Congress has not expressly authorizes use of SEPS, either generally or specifically, in Clean Water Act enforcement actions against municipalities operating sewer systems. In the absence of congressional approval, there are compelling legal and policy reasons mitigating against the use of SEPs in settlements or consent decrees with state and local governments.” -- *Doug Obey*(dobey@iwpnews.com)
=====

Stephanie Brown
OECA/OCE/WCED

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>
Date: August 23, 2019 at 7:15:25 AM EDT
To: brown.stephanie@epa.gov
Subject: The Morning Headlines from InsideEPA.com -- August 23, 2019
Reply-To: insideepa-alerts@iwpnews.com



August 23, 2019

The Weekly Focus

Trump Backers Downplay California Auto GHG Deal Amid Industry Unease

Supporters of the Trump administration's bid to freeze Obama-era vehicle greenhouse gas and fuel economy rules are seeking to downplay the significance of California's voluntary deal with four major automakers on the issue, despite increasing signs that other auto companies might join the pact or spurn the Trump rollback.

Latest News

DOJ Narrows Use Of SEPs In Municipal Settlements, Eyes Further Limits

The Justice Department (DOJ) is further scaling back use of supplemental environmental projects (SEPs) in settlements with local government agencies, and signaling possible additional limits in the future, measures that are likely to draw opposition from municipal groups, who favor SEPs in consent decrees to mitigate penalties.

EPA Proposes Flexible Landfill Methane Plan, But Delays Compliance Dates

EPA in a new proposed rule outlines flexible compliance options for states and industry to follow in a federal plan for limiting methane emissions from municipal solid waste (MSW) landfills, but the rule may prove moot given the agency's recent extensions of compliance dates for states to issue their own plans or face direct federal standards.

In First, Court Faults Obama-Era CWA Jurisdiction Rule, Orders Fixes

A federal court in Georgia has, for the first time, found the Obama-era Clean Water Act (CWA) jurisdiction rule violates several aspects of the water law and administrative law, but rather than vacating the rule, the court is ordering officials to continue their plans to revise the rule "in light of the serious defects identified in this Order while leaving this Court's existing preliminary injunction in place."

EPA Urges Regions To Step Up Actions To Reduce NPDES Noncompliance

EPA enforcement chief Susan Bodine is urging the agency's regional offices to begin meeting regularly with states to develop plans to reduce significant noncompliance (SNC) with Clean Water Act discharge permit requirements, in order to meet a national goal of cutting in half the existing SNC rate of 29.4 percent by the end of fiscal year 2022.

Daily Feed

Dow federal affairs chief picked to lead EPA Region 1

Dennis Deziel, who has served as head of federal government affairs for Dow since 2014, will take over as Regional Administrator for the New England states.

Court rejects FOIA suit to force release of vehicle GHG model

Environmentalists have lost their bid to force release of an EPA computer model they argue would help undermine the agency's efforts to roll back Obama-era vehicle greenhouse gas standards.

EPA formally declines to set CWA spill requirements

The agency rejected calls from state emergency responders and environmentalists who argue a rule is needed to prevent chemical spills like the one that closed Charleston's, WV, drinking water system in 2014.

Ewire: Inslee ends 2020 bid as Sanders offers ambitious climate plan

In today's Ewire: The twin developments further underscore the extent to which climate issues are resonating with the 2020 Democratic field.

D.C. Circuit sets argument for 2015 ozone NAAQS designations suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument on Nov. 6 in consolidated litigation challenging EPA's designations of which areas are attaining the 2015 ozone standard.

Environment Next

Lead Batteries' Top Sustainability Score May Be Model For Other Sectors

A global non-profit organization that assesses the sustainability of consumer products is awarding widely used lead-acid batteries one of its highest scores as the most recycled consumer product, a significant finding that experts suggest could be a model for other sectors as they weigh steps to participate in the emerging circular economy.

From The Editor

Green New Deal Versus Industry-Led Plans: Can't We All Just Get Along?

Democrats and Republicans have significantly different plans for how to address climate change and other major environmental problems, with many progressives pitching a Green New Deal (GND) with heavy government involvement while the GOP pushes for industry-led or voluntary plans -- but why can't we all get along and combine them?

Read all the latest EPA news, analysis and documents →

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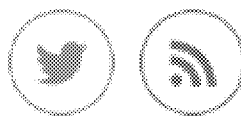
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Telephone: 703-416-8500 or 1-800-424-9068

Message

From: Holmes, Carol [Holmes.Carol@epa.gov]
Sent: 8/21/2019 6:04:43 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]
Subject: FW: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments
Attachments: DOJ SEP Memo 8 21 19.pdf

Sharing with XPS now, but will let Rosemarie send whatever cover note she may want to all of OCE.

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Holmes, Carol
Sent: Wednesday, August 21, 2019 1:57 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: RE: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

Here is a Greenwire Article and the memo

The Trump administration is narrowing a long-standing federal practice of letting polluters do penance for their environmental violations, often in exchange for lower fines.

Jeffrey Bossert Clark, head of the Justice Department's environment division, outlined the policy change in a memo today, specifically targeting "supplemental environmental projects," or SEPs, in legal settlements with state and local governments.

SEPs work as general offsets for some of the harm associated with a violation of the Clean Air Act, the Clean Water Act or other federal law. Instead of simply fixing the infraction and paying a fine that goes into general government coffers, a violator can fix the infraction, volunteer to do an EPA-approved project with environmental benefits, and usually pay a smaller fine.

Those on-the-ground benefits and lower penalties make SEPs popular among enforcement officials, environmental groups and polluters alike. Government lawyers have used them in settlement negotiations for 25 years.

But Clark's memo bars the use of SEPs in federal settlements with state and local governments — voicing ideological concerns about SEPs that have percolated in conservative circles for decades.

Critics say Clark's move will eliminate opportunities to help communities affected by pollution and may hamstring enforcement officials in settlement negotiations.

The policy change builds upon 2018 guidelines from then-Attorney General Jeff Sessions, who said settlements that direct states, cities and counties to go beyond simple compliance with federal laws can deprive local elected officials and voters of the opportunity to decide their own local policy issues.

"SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General's November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations," Clark wrote in today's memo.

The curtailment of SEPs follows recent controversy and confusion over their use. An earlier directive from Sessions barred DOJ lawyers from requiring defendants to make payments to third parties. Jeff Wood, who was then acting head of DOJ's Environment and Natural Resources Division, issued a follow-up memo clarifying that SEPs didn't constitute third-party payments and were therefore still acceptable.

Around the same time, House lawmakers approved the "Stop Settlement Slush Funds Act," which would have prohibited third-party payments and specified that SEPs did fall in that category. Bill supporters argued that SEPs illegally redirect money that would have landed in federal accounts. The proposal never advanced in the Senate.

Clark referenced that debate in today's memo, noting that Congress has never explicitly authorized SEPs. He also rejected an argument that lawmakers gave their blessing through 2018 Clean Water Act amendments that obliquely reference the tools.

The memo includes a footnote that says Clark is considering whether to prohibit SEPs entirely. For now, though, the restriction applies only to SEPs in settlements with state and local governments.

Higher penalties?

The policy shift will change the way government lawyers work out settlements.

Federal enforcement officials would be unable to negotiate a Clean Water Act deal with Chicago, for example, in which the city agreed to conduct a related SEP to offset some of the environmental damage from its violations.

In theory, Chicago would instead pay a higher penalty for its actions. But critics of DOJ's new policy say that's unlikely.

Eric Schaeffer, executive director of the nonprofit Environmental Integrity Project and a former EPA enforcement official, cautioned that the Trump administration will likely seek to keep penalties low *and* eliminate SEPs.

"If they were making people pay and saying, 'We're not doing SEPs anymore, and our theory is this money really belongs to Treasury, so we don't want to offset it with these projects,' then that would be one thing," Schaeffer said. "But that's not what they're doing."

Former DOJ environment chief John Cruden, now at the law firm Beveridge & Diamond PC, noted that while SEPs aren't extremely common in city or state cases, they sometimes serve as a critical tool in resolving a dispute.

He recalled a 1998 case involving Clean Water Act violations by New Orleans. Federal and city lawyers finally reached a settlement after New Orleans agreed to address problems with its sewage system and also conduct a SEP aimed at cleaning up a beach on Lake Pontchartrain.

"There might be some instances where important settlements may either take longer or not happen at all if you do away with all SEPs offered by state and local governments," Cruden said.

Plus, he said, local communities affected by environmental violations could lose out on projects that often benefit them.

"There are many situations — which often raises environmental justice opportunities — where SEPs allow the federal government to obtain related relief for local communities and adversely impacted residents that would not otherwise be available," he said.

Clark's memo acknowledges many of the policy arguments supporting SEPs, noting that they can be useful enforcement tools and are often favored by local governments. But he concluded that they should be subject to "close, case-by-case scrutiny."

"SEPs can be seen as challenging the congressional power of the purse by, in essence, redirecting funds from the United States Treasury in exchange for projects that Congress has not approved. Perhaps if asked, Congress would authorize funds for diesel emission reduction projects, to take one example," he wrote. "But Congress may also prefer to spend those funds on, say, a new aircraft carrier or on ending the opioid epidemic.

"Absent a clearly expressed intention from Congress to delegate money-redirection authority to the Executive Branch, Congress' wishes should be respected."

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Wednesday, August 21, 2019 1:53 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>
Subject: FW: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

I should have included you on this email given that Amy is out.

From: Kelley, Rosemarie
Sent: Wednesday, August 21, 2019 1:26 PM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>; OECA Office Directors and Deputy Directors <OECA_Office_Directors_and_Deputy_Directors@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Susan Bodine (bodine.susan@epa.gov) <bodine.susan@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

All—

I want to let you know that DOJ just issued a memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments minutes ago.

More to come on next steps, but I thought you should know about this memo.

Rosemarie

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 2:17:17 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Sending to all of you as an FYI. Please do not forward it.

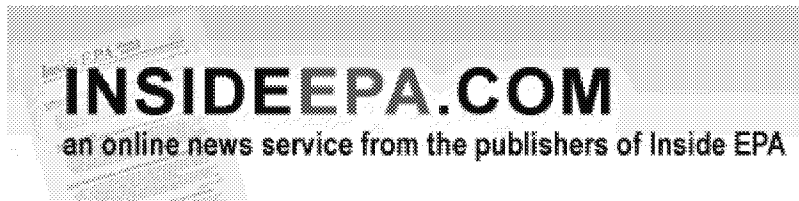
From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 10:16 AM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
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Larry



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August 08, 2019

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The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions – and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

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However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

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The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' June 2017 memo banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to "sweetheart deals" for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition would drastically impair their ability to settle EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials were concerned that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

EPA Policy

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in a January 2018 memo clarified exceptions to the payment ban, including for projects that comply with EPA's 2015 SEP policy.

Then, Sessions in [a November 2018 policy](#) wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has [so far declined](#) a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ "has cited new documents to us," the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. "We have to debate, 'Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, 'OK, we're going to put more money in the penalty?'"

These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the settling party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

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City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

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The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 2:16:34 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

FYI

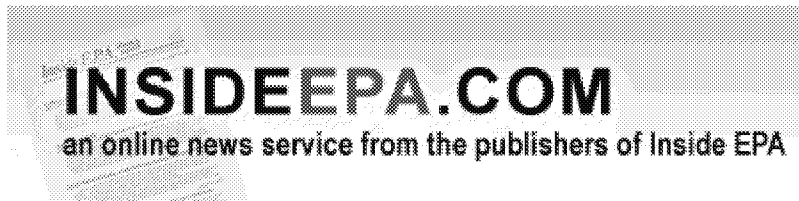
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To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>
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220946

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 12:05:53 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Smith-Watts, David [Smith-Watts.David@epa.gov]
Subject: RE: InsideEPA Article on SEPs

Thanks for sending, David! We kind of expected this.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Friday, August 09, 2019 7:57 AM
To: Smith-Watts, David <Smith-Watts.David@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: InsideEPA Article on SEPs

Yep, the usual inside epa article. As much wrong as right. Thx for sending as it did come out late in the day!

Sent from my iPhone

On Aug 9, 2019, at 7:17 AM, Smith-Watts, David <Smith-Watts.David@epa.gov> wrote:

In case you didn't see this yesterday...

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August 08, 2019

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Some GOP lawmakers also complained that such settlements amount to "sweetheart deals" for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition would drastically impair their ability to settle EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials were concerned that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

EPA Policy

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in a January 2018 memo clarified exceptions to the payment ban, including for projects that comply with EPA's 2015 SEP policy.

Then, Sessions in a November 2018 policy wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has so far declined a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ "has cited new documents to us," the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. "We have to debate, 'Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, 'OK, we're going to put more money in the penalty?'"

These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the setting party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

The attorney notes that including SEPs in local government settlements has "been very valuable" and "helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency."

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- Dawn Reeves (dreeves@iwpnews.com) & Lee Logan (llogan@iwpnews.com)

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David Smith-Watts
Attorney-Advisor
U.S. EPA/OECA/OCE/IO/XPS
1200 Pennsylvania Ave., NW (MC 2241A)
Washington, DC 20460
Phone: (202) 564-4083
Email: smith-watts.david@epa.gov

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/5/2019 6:02:41 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: Revised SEP Note to Claire Murray

Haa! I was just now looking for you!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 1:59 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Revised SEP Note to Claire Murray

I stopped by to see you but you were on a call. I'll try again in a few minutes.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 12:50 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Revised SEP Note to Claire Murray

Rosemarie—

Ex. 5 AC/DP

Thanks
Amy

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 10:26 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Revised SEP Note to Claire Murray

Revised per Larry's comments. I cleaned up some typos and made one substantive change to the sentence in red below

Ex. 5 AC/DP

Claire—

Ex. 5 AC/DP

Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/6/2019 8:31:09 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: IMPORTANT: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Don't worry about it, really. We are all really going too fast, and it's easy to do the thing you might not do if you'd only not been on a flat out run. On the other hand, just today I said something really awful to someone, that undoubtedly caused them pain, with no such reason, just my own bone-headedness and forgetfulness that my joke squarely implicated their own personal tragedy.

All one can do is say sorry. And here, you've already done that!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy
Sent: Thursday, June 06, 2019 4:25 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Re: IMPORTANT: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

It is definitely a lesson learned. I guess I didn't think you needed to be on it because of course you already knew that you were making the edits. But clearly that is not the right approach here for so many reasons. Sigh.

Sent from my iPhone

On Jun 6, 2019, at 3:16 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Don't worry about it! It's ok, and I'm so glad to know it's not as awkward as we thought

Sent from my iPhone

On Jun 6, 2019, at 2:22 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I can't tell you how awful I feel about this.

Sent from my iPhone

On Jun 6, 2019, at 2:12 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Oh, wow. I guess that is a reminder to selves to always check. And, ugh, can't believe I'm saying this, LOL, not "overreact." Or lose sleep over stuff! Well, glad to know it's not as we feared. Or I did...

Sent from my iPhone

On Jun 6, 2019, at 2:04 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I owe you the BIGGEST APOLOGY EVER Caroline. I am the one who left you off and then Rosemarie just replied all. OMG OMG OMG. I am soooooooooooooooooooooo sorry. I want to crawl in a hole.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 9:53 AM
To: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnpc Fogarty <Fogarty.Johnpc@epa.gov>
Subject: FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

Caroline is accepting Larry's comments and will send a clean version to Rosemarie to send up.

From: Starfield, Lawrence
Sent: Wednesday, June 05, 2019 9:09 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

This looks good. I had a few suggestions, below. Please consider them, and then send a revised version to both Susan and me so that we can issue this today. Thanks.

Larry

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From: Kelley, Rosemarie
Sent: Tuesday, June 04, 2019 7:03 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy
<Porter.Amy@epa.gov>; Makepeace, Caroline
<Makepeace.Caroline@epa.gov>; Fogarty, Johnpc
<Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin
<Buterbaugh.Kristin@epa.gov>; Shiffman, Cari
<Shiffman.Cari@epa.gov>

Subject: Draft Thank-You Email from Bodine to Murray
re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire.
We look forward to your feedback.

Claire—

Ex. 5 AC/DP

Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/3/2019 8:47:42 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Rosemarie Kelley [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Karin Koslow [Koslow.Karin@epa.gov]
Subject: RE: update on SEPs and DOJ
Attachments: Draft thank you email Bodine to Murray.docx

Per Amy's update below -- a cut at the latest approach (pasted below and attached)

Draft Thank-You Email re meeting on SEPs
6/3/19 Draft

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement

US Environmental Protection Agency
202-564-6012

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From: Porter, Amy
Sent: Monday, June 03, 2019 4:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: update

Ex. 5 AC/DP

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/28/2019 7:32:22 PM
To: Bailey-Morton, Ethel [Bailey-Morton.Ethel@epa.gov]
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

No problem! Thanks for your help!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:30 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Thank you

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 3:29 PM
To: Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

The revised talking points, attached

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence

<Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Caroline,

Please provide copies to the IO office for this meeting tomorrow.

Thanks,
Ethel

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 3:04 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting

Just got some feedback from Larry on the talkers, so will be tweaking that piece and re-sending.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 2:57 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 12:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2019 3:43:25 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Sounds like a plan

Sent from my iPhone

On Aug 7, 2019, at 11:40 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I'm not sure. I'd like to wait for next week when RK is back.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 07, 2019 10:45 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ok. When is that happening?

Sent from my iPhone

On Aug 7, 2019, at 10:33 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Well I thought about this and decided to stay silent but then Karin emailed me and said we need to discuss. 😊

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 07, 2019 10:32 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 AC/AWP/DP, 7(A)

Sent from my iPhone

On Aug 7, 2019, at 8:17 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Ex. 5 AC/AWP/DP, 7(A)

you please start thinking about how we might message it. And BTW the deadlines are fast approaching. Please see below.

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is. . . .sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline's email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

The existing OECA issue papers are (I've added some parentheticals):

1. Criminal Enforcement – New Cases
2. Criminal Enforcement – Number of Agents
3. Drinking Water Enforcement (*need to update, if we keep?*)
4. Enforcement Activity Annual Results
5. FY20 OECA Enforcement and Compliance Programs
6. Information Requests (*is this still a "hot" topic or can we strike this paper?*)
7. Inspection Numbers
8. Lead Enforcement Activity
9. Notice of Judicial Referrals (*is this still a "hot" topic or can we strike this paper?*)
10. PFAS Enforcement Activity (need to update)
11. Transition National Enforcement Initiatives to National Compliance Initiatives (*OC should update this to reflect final NCIs, with our input*)

12. Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
13. Key OECA Program Changes (needs a lot of updating based on other issue papers)

OCE DEADLINES:

Monday August 5th COB – please let me, Amy and Karin know if you want to draft a new issue paper, or strike an existing one.

Wednesday August 14th COB – final papers, approved through Rosemarie or Karin, to me. Please use your Generals that week to get final approval by Rosemarie/Karin.

Attached are:

1. OECA Final.zip.. Zip file containing all the latest versions of the OECA issue papers last updated this Spring. In other words, the starting point for revisions/updates.
2. Program Office Fact Sheet Format. The latest fact sheet format.
3. 01-01-2019-TOC Program Fact Sheets.... A list of all the issue papers provided by all the program offices. *Let me know if you are interested in reviewing any issue papers of another program office and I'll let OAP know they should request a copy of the latest version (which may be changing of course). I already have all of OLEM's if anyone wants those.*

Thanks, Carol

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>
Sent: Thursday, August 1, 2019 4:54 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele
<Kadish.Rochele@epa.gov>; Cavanaugh, Charles
<Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>;
DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy
<Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller,
Marie <MULLER.MARIE@EPA.GOV>
Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth
<Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>;
Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth
<Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>;
Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally
<Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer,
Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir
<Ingram.Amir@epa.gov>
Subject: Administrator Hearing: issue papers- Due August 15th
Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

- Issue paper table of contents (TOC) (list of OECA issues papers below);
- OECA Issue papers:
 - Criminal Enforcement – New Cases
 - Criminal Enforcement – Number of Agents
 - Drinking Water Enforcement
 - Enforcement Activity Annual Results
 - FY20 OECA Enforcement and Compliance Programs
 - Information Requests
 - Inspection Numbers
 - Lead Enforcement Activity
 - Notice of Judicial Referrals
 - PFAS Enforcement Activity
 - Transition National Enforcement Initiatives to National Compliance Initiatives
 - Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
 - Key OECA Program Changes

Also attached are:

- OLEM issue papers (for your awareness, **note: we are not taking comment on these**)

- Template for new issue papers

Due Dates:

- By Monday (8/5) at noon or sooner: Please let me know if you have any recommended additions or deletions to the OECA TOC list.
- By Noon, Thursday (8/15), please provide any new issue papers and any updates/deletions/additions to the attached issue papers.

Please note the following:

Site fact sheets: OCIR will be requesting site issue papers for committee members from the regions and they may ask us for additional info too. We will keep you posted.

Other AAship papers: please let me know if you would like to see any particular issue papers from other AAships, understanding that they might be making changes/additions/deletions.

We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

*Caroline Emmerson, Director, Policy and Legislative Coordination
Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue,
N.W., Washington, DC 20460/ 202-564-1716 (office),
emmerson.caroline@epa.gov*

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<OECA FINAL.zip>

<04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx>

<Program Office Fact Sheet Format.docx>

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2019 3:00:42 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: Fwd: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Attachments: OECA FINAL.zip; ATT00001.htm; 04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx; ATT00002.htm; Program Office Fact Sheet Format.docx; ATT00003.htm

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

From: "Porter, Amy" <Porter.Amy@epa.gov>
Date: August 7, 2019 at 8:17:15 AM EDT
To: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Subject: FW: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 Deliberative Process (DP)

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is...sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline's email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

The existing OECA issue papers are (I've added some parentheses):

1. Criminal Enforcement – New Cases
2. Criminal Enforcement – Number of Agents
3. Drinking Water Enforcement (*need to update, if we keep?*)
4. Enforcement Activity Annual Results
5. FY20 OECA Enforcement and Compliance Programs
6. Information Requests (*is this still a “hot” topic or can we strike this paper?*)
7. Inspection Numbers
8. Lead Enforcement Activity
9. Notice of Judicial Referrals (*is this still a “hot” topic or can we strike this paper?*)
10. PFAS Enforcement Activity (need to update)
11. Transition National Enforcement Initiatives to National Compliance Initiatives (*OC should update this to reflect final NCIs, with our input*)
12. Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
13. Key OECA Program Changes (needs a lot of updating based on other issue papers)

OCE DEADLINES:

Monday August 5th COB – please let me, Amy and Karin know if you want to draft an new issue paper, or strike an existing one.

Wednesday August 14th COB – final papers, approved through Rosemarie or Karin, to me. Please use your Generals that week to get final approval by Rosemarie/Karin.

Attached are:

1. OECA Final.zip.. Zip file containing all the latest versions of the OECA issue papers last updated this Spring. In other words, the starting point for revisions/updates.
2. Program Office Fact Sheet Format. The latest fact sheet format.
3. 01-01-2019-TOC Program Fact Sheets.... A list of all the issue papers provided by all the program offices. *Let me know if you are interested in reviewing any issue papers of another program office and I'll let OAP know they should request a copy of the latest version (which may be changing of course). I already have all of OLEM's if anyone wants those.*

Thanks, Carol

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>

Sent: Thursday, August 1, 2019 4:54 PM

To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Cavanaugh, Charles <Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>; DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>

Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>; Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally <Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>

Subject: Administrator Hearing: issue papers- Due August 15th

Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

- Issue paper table of contents (TOC) (list of OECA issues papers below);
- OECA Issue papers:
 - Criminal Enforcement – New Cases
 - Criminal Enforcement – Number of Agents
 - Drinking Water Enforcement
 - Enforcement Activity Annual Results
 - FY20 OECA Enforcement and Compliance Programs
 - Information Requests
 - Inspection Numbers
 - Lead Enforcement Activity
 - Notice of Judicial Referrals
 - PFAS Enforcement Activity
 - Transition National Enforcement Initiatives to National Compliance Initiatives
 - Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
 - Key OECA Program Changes

Also attached are:

- OLEM issue papers (for your awareness, **note: we are not taking comment on these**)
- Template for new issue papers

Due Dates:

- By Monday (8/5) at noon or sooner: Please let me know if you have any recommended additions or deletions to the OECA TOC list.

- By Noon, Thursday (8/15), please provide any new issue papers and any updates/deletions/additions to the attached issue papers.

Please note the following:

Site fact sheets: OCIR will be requesting site issue papers for committee members from the regions and they may ask us for additional info too. We will keep you posted.

Other AAship papers: please let me know if you would like to see any particular issue papers from other AAships, understanding that they might be making changes/additions/deletions.

We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

*Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/ 202-564-1716 (office), emmerson.caroline@epa.gov*

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/4/2019 4:08:53 PM
To: Folkemer, Nathaniel [Folkemer.Nathaniel@epa.gov]; Emmerson, Caroline [Emmerson.Caroline@epa.gov]; Ingram, Amir [Ingram.Amir@epa.gov]
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

You guys ROCK. Thank you.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Folkemer, Nathaniel
Sent: Tuesday, June 04, 2019 11:51 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

We will look and see if we can find it for you.

Nate Folkemer
(w) 202-564-0668
(EPA cell) 202-578-9934

From: Makepeace, Caroline
Sent: Tuesday, June 4, 2019 11:49 AM
To: Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Thanks so much!

Q for you --- is there a way to get hold of the transcript of the Senate banking comm hearings on HR 10, held on 7/13/17? That's the 'boyden gray' one I was talking about. My research skills are so lacking!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Folkemer, Nathaniel
Sent: Tuesday, June 04, 2019 11:40 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>;

Ingram, Amir <Ingram.Amir@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Caroline,

Thanks for letting us know we can stand down on your request. As I mentioned on the phone, I already started pulling this list of materials and a rough cut/paste list of prior legislation.

Oldest = Goodlatte and Buck amendments from June / July 2015 (used identical language) and email from DOJ of the potential impacts of the amendment.

H.R. 5063 – Judiciary Committee markup notes from 5/11/2016 that includes amendments and discussion of the bill

H.R. 732 – Congressional Record (10/24/2017) included roughly 19 pages of debate, the House Report (3/30/2017) that includes an entire dissenting opinion section

Nate Folkemer

(w) 202-564-0668

(EPA cell) 202-578-9934

From: Makepeace, Caroline

Sent: Tuesday, June 4, 2019 10:38 AM

To: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>

Subject: FW: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Note that we are no longer at the same place in terms of the ask, and that the original ask was not communicated in such strong terms.

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 3:29 PM

To: Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

The revised talking points, attached

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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ED_004082K_00021384-00002

From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Caroline,

Please provide copies to the IO office for this meeting tomorrow.

Thanks,
Ethel

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 3:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Just got some feedback from Larry on the talkers, so will be tweaking that piece and re-sending.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 2:57 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>
Subject: Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 12:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/29/2019 5:48:22 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
CC: Koslow, Karin [Koslow.Karin@epa.gov]; Amy Porter [Porter.Amy@epa.gov]
Subject: RE: Follow-up Items to OCE Weekly 4-25-19
Attachments: Background on Municipal Settlements Including Supplemental Environmental Projects.docx

Attached is what I've put together from WED. Let me know if you think it needs revision in any way.

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Kelley, Rosemarie
Sent: Sunday, April 28, 2019 10:19 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>
Subject: Re: Follow-up Items to OCE Weekly 4-25-19

John--

Did you get anything from WED re: SEPs in muni cases?

Rosemarie

From: Fogarty, Johnpc
Sent: Thursday, April 25, 2019 4:41 PM
To: Bodine, Susan; Buterbaugh, Kristin; Sullivan, Greg; Saenz, Diana; Makepeace, Caroline
Cc: Starfield, Lawrence; Traylor, Patrick; Shiffman, Cari; Branning, Hannah; Kelley, Rosemarie
Subject: RE: Follow-up Items to OCE Weekly 4-25-19

OK, we heard the timeline but will pull together some examples.

From: Bodine, Susan

Sent: Thursday, April 25, 2019 4:40 PM

To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: RE: Follow-up Items to OCE Weekly 4-25-19

I was looking for a few examples –

Ex. 5 AC/DP

From: Fogarty, Johnpc

Sent: Thursday, April 25, 2019 4:38 PM

To: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: RE: Follow-up Items to OCE Weekly 4-25-19

Ex. 5 AC/DP

From: Buterbaugh, Kristin

Sent: Thursday, April 25, 2019 4:18 PM

To: Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: Follow-up Items to OCE Weekly 4-25-19

Good afternoon,

Here the follow-up items from today's OCE Weekly:

1. National Mining Association meeting

Ex. 5 AC/DP

2. SEP meeting

Ex. 5 AC/DP

Please let me know if there are any questions. Thank you.

Kristin Buterbaugh

Special Assistant

OECA - Office of Civil Enforcement

U.S. Environmental Protection Agency

WJC South 3119C

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4479

Buterbaugh.Kristin@epa.gov

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/17/2019 2:25:23 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Susan Okeefe [OKeefe.Susan@epa.gov]
Subject: RE: SEP summaries, revised version
Attachments: Recent SEP Examples.4.17.19.docx

Susan and Larry –

The attached fixes a small, but potentially confusing, typo in the document.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Fogarty, Johnpc
Sent: Tuesday, April 16, 2019 5:49 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: SEP summaries

Susan and Larry – attached is a document that briefly describes a number of different SEPs that were included in recent cases. It is not intended to be comprehensive of all recent SEPs but is instead simply intended to illustrate the range of different projects included in various settlements under a variety of statutes.

Let us know if you want any additional information in preparation for the meeting on Friday.

From: Fogarty, Johnpc
Sent: Monday, April 15, 2019 4:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Materials for discussion with DOJ on SEPs

Susan and Larry –

Attached are several materials in advance of the meeting with DOJ on Friday on SEPs.

First are two briefing papers (on SEPs and third-party payments), that were prepared by DOJ. These were just shared with us and we have not yet had a chance to review.

Second, also attached is a chart showing SEP annual results for the past ten years, and a copy of the current and consolidated SEP Policy (the “2015 Update”). We are also pulling together a variety of recent examples of SEPs which we will forward Wednesday, in advance of briefing you on all of this at the OCE general Thursday.

Ex. 5 AC/DP

Please let us know if you have any questions or would like other materials.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/9/2019 1:25:55 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: **Ex. 7(A)**

Sorry forgot to add you.

Sent from my iPhone

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: April 9, 2019 at 9:25:16 AM EDT
To: "Theis, Joseph" <Theis.Joseph@epa.gov>
Cc: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
Subject: Re: **Ex. 7(A)**

Thanks!

Ex. 5 AC/DP

Sent from my iPhone

On Apr 9, 2019, at 9:14 AM, Theis, Joseph <Theis.Joseph@epa.gov> wrote:

Caroline, Here is Susan's email on **Ex. 7(A)** that Rosemarie mentioned.

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

This email may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this email has been received by you in error, you are instructed to delete it from your machine and all storage media whether electronic or hard copy.

From: Bodine, Susan
Sent: Friday, April 05, 2019 4:23 PM
To: Theis, Joseph <Theis.Joseph@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: RE: interpretive statement and follow-up **Ex. 7(A)** question

Results of DOJ call this morning:

Ex. 5 AC/AWP/DP

From: Theis, Joseph

Sent: Friday, April 5, 2019 2:51 PM

To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>

Subject: RE: interpretive statement and follow-up **Ex. 7(A)** question

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
- Joe

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/17/2019 3:47:08 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: **Ex. 7(A)**

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Sep 17, 2019, at 11:15 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Thank you

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, September 17, 2019 11:15 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: **Ex. 7(A)**

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Sep 17, 2019, at 11:07 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Thanks, Caroline. I assume DOJ, OCE Divisions, and regions have reviewed?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, September 16, 2019 3:19 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: **Ex. 7(A)**

Ex. 5 AC/AWP/DP Ex. 7(A)

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Ex. 7(A)

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/12/2019 9:20:10 PM
To: home (makepeace@verizon.net) [makepeace@verizon.net]; 'Gmail' [caromakepeace1@gmail.com]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: in case computer does not work
Attachments: Ex. 7(A) 09 12 19 .docx; Ex. 7(A) 09 12 19.docx; Ex. 5 AC/DP x

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/12/2019 4:54:52 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Ex. 7(A) better versions
Attachments: Ex. 7(A) 09 12 19.docx

Ugh, version control issues, because my computer kept crashing – please look at these instead. Sorry!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Thursday, September 12, 2019 12:42 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Ex. 7(A)

Karen –

Ex. 5 AC/AWP/DP, Ex. 7(a)

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Caroline Makepeace
Senior Counsel
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US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2018 8:02:07 PM
To: Zimny, James [zimny.james@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]
CC: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Amy Porter [Porter.Amy@epa.gov]
Subject: RE: **Ex. 7(A)**
Attachments: FINAL 2015 UPDATE TO SEP POLICY.pdf

Hi Guys –

Ex. 5 AC/DP, Ex. 7(a)

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Zimny, James
Sent: Tuesday, August 07, 2018 1:22 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>
Subject: **Ex. 7(A)** SEP updated proposal

Caroline, I just wanted to make sure that you saw the meeting background info that I included in the invite:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Talking Points on SEPs and Mitigation Projects -- 2/27/18

What are SEPs and Mitigation Projects?

A Supplemental Environmental Project (SEP) is an environmentally beneficial project that is proposed by a defendant to be included in an enforcement settlement. A SEP is:

- Voluntary, and cannot be required or compelled by EPA.
- An action or activity that goes beyond what is required for compliance with any local, state or federal law, or as part of any other enforcement settlement, and provides public health or environmental benefits not otherwise available.
- Developed and implemented by a settling defendant using its own funds
- Included in a settlement only if a defendant is interested in the project and it meets the legal and other criteria contained in EPA's SEP Policy.
- Not a penalty, and SEPs are not be accepted in lieu of a federal penalty. Rather, a SEP is one factor that is considered in the development of an appropriate penalty for a settlement. A defendant may receive a reduction in penalty for volunteering to implement a SEP.

Mitigation Projects are similar to SEPs in that they provide an environmental or public health benefit, in the context of a settlement. However, there are several significant differences. Mitigation is:

- Part of the injunctive relief package.
- Aimed at directly redressing or remediating harm done to public health or the environment by the violations at issue.
- Likely to be ordered by a court. It is rooted in a court's equitable authority to require actions that redress the effects of a defendant's noncompliance.
- Not the basis for any penalty mitigation/consideration in a settlement.

Neither SEPs nor mitigation projects:

- Are payments of money to a third party in lieu of penalties.
- Can inadvertently augment or supplement EPA's or another government agency's budget or program, or give the appearance that a federal agency had "constructively received" such funding. *They cannot be:*
 - Used to accomplish work for which the EPA or any other federal agency receives appropriated funds.
 - Directed, controlled, or managed by EPA. And, EPA cannot require a defendant to perform a SEP, nor can EPA require that a defendant perform a specific project as its SEP. EPA can also play no role in the decision to use a 3rd party implementer.
 - Undertaken using federal loans, federal contracts, federal grants, or any other form of federal financial assistance or other federally-provided assistance. And there cannot be any such funding open that could be used for the project.

There are no SEP or mitigation “programs.” Rather, the inclusion of a SEP or mitigation in a particular enforcement settlement is guided by the 2015 Update to the SEP Policy, or the 2012 Mitigation Guidance, which outline the legal and policy guidelines and requirements that must be met.

States and tribes which are Co-plaintiffs in an enforcement action can evaluate proposals and accept SEPs (or, in appropriate cases where mitigation is warranted, participate in the negotiation of mitigation projects).

- In fact, depending on their particular independent legal authorities and policies, State and tribal co-plaintiffs may be able to accept non-federal SEPs that might not meet the federal SEP Policy.
- EPA encourages defendants who are interested in proposing a SEP to reach out to the local communities for ideas.
- Case teams may also share ideas that they know would be particularly welcome in a certain community and might have nexus. However, they must be aware of the delicate balance between encouraging and helping interested defendants to develop viable SEPs, and avoiding any perception that EPA is either pressuring a defendant to propose a SEP, or seeking to exert inappropriate control or influence over a project.

Key Issues to Remember about SEPs and Mitigation:

Projects must have direct “nexus” to the violations at issue:

- There must be a tight, clear connection or relationship between the project benefits and the specific violations being resolved.
 - The project must advance at least one objective, and not be inconsistent with any provision. of the underlying statute.
 - It should be easy and straightforward to explain how to “connect the dots” between the particular violations and the benefits of the project (and there should not be too many “dots” to connect).
- Generally, the project must involve the same pollutant or same health effects as were involved in the specific violations you are settling, addressing the same adverse impacts or risks to which the violations contributed, or preventing future similar violations.
- It is not enough that a project is a good idea, or something beneficial that a community wants, or a company wants to do, or generally beneficial to the environment in the same medium, or in the same geographic location.
- In some cases, there may be sufficient nexus when a project addresses a different environmental medium than that in which the violation occurred, or addresses a different pollutant, provided that there is a direct, straightforward connection to the different medium or pollutant.
 - *E.g.*, where a project addresses:
 - the same pollutant at issue in the violation, but in a different environmental

- medium;
 - the same public health risk or effects presented by the violation (*e.g.*, pollutants that contribute to childhood asthma other than the asthma-inducing pollutant that was at issue in the violation); or
 - the same environmental risk posed by the violation (*e.g.*, where hazardous waste violations contributed to particular water quality or aquatic ecosystem impacts through deposition in the water and the SEP is designed to address those same water quality or aquatic ecosystem impacts in the same waterbody).
- Note that, since mitigation is aimed at restoring, as much as possible, the *status quo ante*, before the violations occurred, there should be an even closer connection, than for a SEP, between the project and the harm it addresses.

Projects cannot be cash donations or payments to a third party

- Cash donations or payments, in and of themselves, provide no direct, tangible environmental or public health benefit. As there is no environmental or public health benefit, there is no nexus.
- The Attorney General recently issued a memorandum prohibiting settlement terms that include monetary payments to non-governmental third parties (with certain limited exceptions).
- Consistent with this memo, EPA's policy and practice has long been against including such terms in settlement (except where authorized by statute).
- The memo has not changed EPA policy or practice on SEPs or mitigation.
 - However, it continues to be advisable to draft documents to avoid misperceptions or confusion.

Careful drafting of any documents involving projects is important

- Case teams should take care in drafting settlement documents to ensure that projects are:
 - Clearly framed and described as work to be done, or discrete projects, not as cash donations or payments.
 - Actions for which defendants remain solely responsible to perform and complete.
 - It should also be clear that any decision to employ a 3rd party to help implement the project is the defendant's.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 2/5/2018 9:48:05 PM
To: Gary Jonesi [Jonesi.Gary@epa.gov]; Williamson, Caroline [williamson.caroline@epa.gov]
Subject: FW: SETTLEMENT CONFIDENTIAL - Ex. 7(A) - SEP
Attachments: Ex. 7(A)

FYI –

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Cardile, Joseph
Sent: Monday, February 05, 2018 4:46 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Buettner, Robert <Buettner.Robert@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; LaVigna, Gaetano <LaVigna.Gaetano@epa.gov>; Urdaz, Damaris <Urdaz.Damaris@epa.gov>; Ritz, Phillip <Ritz.Phillip@epa.gov>
Subject: RE: SETTLEMENT CONFIDENTIAL - Ex. 7(A) - SEP

Ex. 5 AC/AWP/DP Ex. 7(A)

Thx
Joe

Joseph Cardile, Environmental Engineer
Stationary Source Compliance Section
Air Compliance Branch
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Phone (212) 637-4054
Email: Cardile.Joseph@epa.gov

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From: Makepeace, Caroline

Sent: Monday, February 05, 2018 2:38 PM

To: Cardile, Joseph <Cardile.Joseph@epa.gov>

Subject: RE: SETTLEMENT CONFIDENTIAL - [REDACTED] Ex. 7(A) - SEP

Hi Joe

Ex. 5 AC/DP, Ex. 7(a)

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Cardile, Joseph

Sent: Thursday, February 01, 2018 6:18 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Jonesi, Gary <Jonesi.Gary@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Urdaz, Damaris <Urdaz.Damaris@epa.gov>; Ritz, Phillip <Ritz.Phillip@epa.gov>

Subject: FW: SETTLEMENT CONFIDENTIAL - [REDACTED] Ex. 7(A) - SEP

Ex. 5 AC/DP, Ex. 7(a)

Thx

Joe

Joseph Cardile, Environmental Engineer

Stationary Source Compliance Section

Air Compliance Branch

U.S. EPA, Region 2

290 Broadway, 21st Floor

New York, New York 10007-1866

Phone (212) 637-4054

Email: Cardile.Joseph@epa.gov

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From: Ritz, Phillip

Sent: Thursday, February 01, 2018 6:14 PM

To: Cardile, Joseph <Cardile.Joseph@epa.gov>

Subject: FW: SETTLEMENT CONFIDENTIAL - [REDACTED] Ex. 7(A) - SEP

From: Simpson, James

Sent: Thursday, April 13, 2017 3:35 PM

To: Ritz, Phillip <Ritz.Phillip@epa.gov>; LaVigna, Gaetano <LaVigna.Gaetano@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>

Cc: Villatora, Liliana <Villatora.Liliana@epa.gov>

Subject: FW: SETTLEMENT CONFIDENTIAL - [REDACTED] Ex. 7(A) SEP

Ex. 5 AC/DP, Ex. 7(a)

Regards,
Jay

From: Robbins, Virginia [mailto:RobbinV@bsk.com]

Sent: Thursday, April 13, 2017 12:39 PM

To: Simpson, James <Simpson.James@epa.gov>

Cc: Beckmann, Diane (USANYE) <Diane.Beckmann@usdoj.gov>; [REDACTED] Ex. 7(A);

Michael J. Cahill <MJC@GermanoCahill.com>; Tyson, Robert <TysonR@BSK.com>

Subject: SETTLEMENT CONFIDENTIAL - [REDACTED] Ex. 7(A) - SEP

Dear Jay,

Ex. 7(A)

Best, Ginny

Virginia C. Robbins, Esq.

Environmental and Energy Practice Group

315.218.8182 Direct

315.218.8000 Alt

315.218.8100 Fax

315.569.4538 Cell

vrobbs@bsk.com

[Bio](#)



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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/29/2019 4:43:37 PM
To: Rosemarie Kelley [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Amy Porter [Porter.Amy@epa.gov]; Karin Koslow [Koslow.Karin@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Cheat sheet list of [REDACTED] Ex. 7(A)
Attachments: [REDACTED] Ex. 7(A)

Ex. 5 AC/DP, Ex. 7(a)

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/8/2017 8:43:02 PM
To: Gary Jones [Jonesi.Gary@epa.gov]
Subject: FW: 6/5/17 AG Memo "Prohibition on Settlement Payments to Third Parties"
Attachments: sepupdatedpolicy15.pdf; 2ndeditionsecuringmitigationemo.pdf; Prohibition_Settlement Payments_06.05.2017.pdf

Importance: High

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Thursday, June 08, 2017 2:19 PM
To: Shinkman, Susan <Shinkman.Susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Cavalier, Beth <Cavalier.Beth@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: 6/5/17 AG Memo "Prohibition on Settlement Payments to Third Parties"
Importance: High

Susan – As discussed, please see draft Email to HQ and Regional Enforcement Managers, below. (Thanks to Beth for initial drafting) Please let me know if you would like to discuss, or if you would like me to compile a list of addressees, etc.

Thanks!
Amy

Dear Colleagues -

On June 5, 2017 the Department of Justice's Office of the Attorney General released a memorandum with the subject "Prohibition on Settlement Payments to Third Parties". (See attached).

I understand there are a lot of questions about how this memo affects our work – especially on supplemental environmental projects (SEPs) and mitigation. We have had preliminary conversations with our DOJ counterparts and while the conversation is ongoing, I wanted to let you know our preliminary read and provide some clarity about continuing work on SEPs and mitigation.

The memorandum states, in part, *"Effective immediately, Department attorneys may not enter into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute."*

The memorandum further lays out three limited exceptions to this policy:

- 1) The policy does not apply to an otherwise lawful payment or loan that provides restitution to a victim or that otherwise directly remedies the harm that is sought to be redressed;
- 2) The policy does not apply to payments for legal or other professional services rendered in connection with the case; and
- 3) The policy does not apply to payments expressly authorized by statute, including restitution and forfeiture.

As SEPs are not payments or loans, but rather discrete environmentally beneficial projects implemented to redress harm, **we will continue to consider including in our settlements SEPs that fully comply with the 2015 Update to the SEP Policy.** Similarly, as mitigation projects redress harm and are part of the injunctive relief required in settlements, **we will continue to consider inclusion of mitigation projects that fully comply with OECA's Mitigation Guidance.** These documents are attached for your convenience, and also available on OCE's SEP Intranet site: <http://intranet.epa.gov/oeca/oce/io/sep/sep.html>

We will continue to ensure that SEPs and mitigation have appropriate nexus and are properly and accurately characterized in settlements as discrete projects. While estimated costs of such projects may be considered in evaluating the appropriateness for inclusion in a settlements, projects are not cash payments or loans. Therefore to avoid any misunderstandings and the ensure that all parties to the settlement fully understand the project that included as a SEP or mitigation, such projects should not be characterized in monetary terms in the settlement documents. For more information, please see the FAQs posted on the SEP Intranet site.

If you have any questions relating to EPA's SEP Policy or Mitigation Guidance, please contact Amy Porter, Director, Crosscutting Policy Staff or Caroline Makepeace or Beth Cavalier of her staff. Caroline can be reached at 202-564-6012. Beth can be reached at 202-564-3271.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/9/2019 6:52:24 PM
To: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Subject: RE: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Yup, that was one of yesterday's firedrills....and of course, Inside EPA still gets so much wrong, albeit some right. But Thanks for sending!

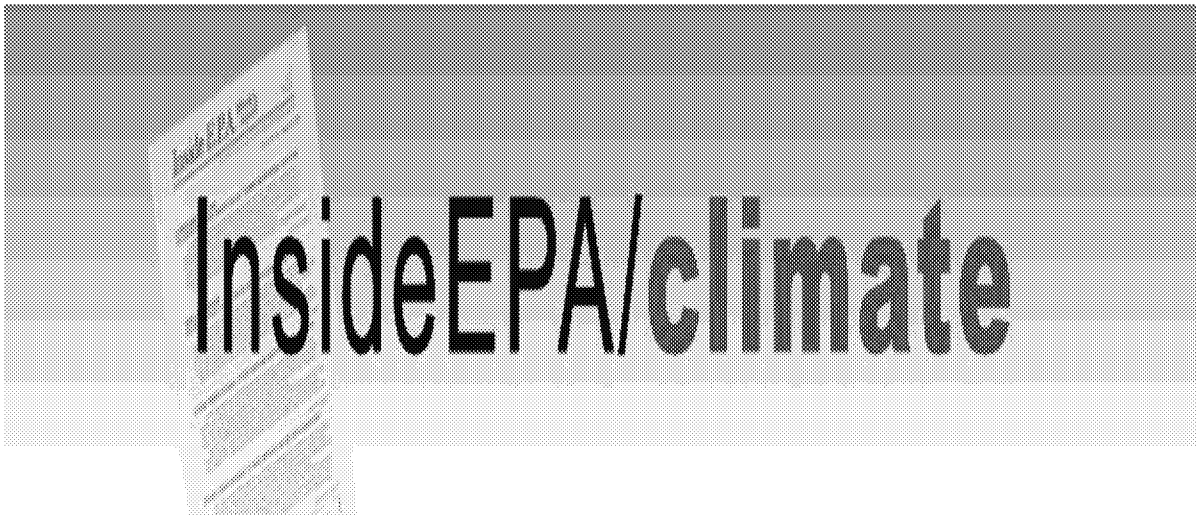
Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Sent: Friday, August 09, 2019 2:46 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

I'm sure you saw this, but just in case ...

From: InsideEPA/climate <epa-alerts@iwpnews.com>
Sent: Friday, August 9, 2019 2:24 PM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy



August 9, 2019

Latest News

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

[READ MORE →](#)

EDITORIAL CONTACT

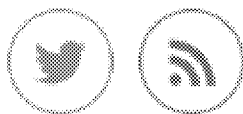
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Telephone: 703-416-8500 or 1-800-424-9068

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Message

From: Porter, Amy [porter.amy@epa.gov]
Sent: 9/12/2019 9:21:59 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]
Subject: Conversation with Rosemarie Kelley

Porter, Amy 5:15 PM:

Caroline is compressed tomorrow and waiting to hear from DOJ on Ex. 5 AC/DP ...wondering if I should ask her to take her computer home and check in. Pls advise.

Message

From: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Sent: 7/31/2019 4:30:50 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]
Subject: FW: my notes on 5 **Ex. 7(A)**

Kristin Buterbaugh
Special Assistant
OECA - Office of Civil Enforcement
U.S. Environmental Protection Agency
WJC South 3119C
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-4479
Buterbaugh.Kristin@epa.gov

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From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Friday, July 26, 2019 6:04 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: my notes on **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP Ex. 7(A)

Ex. 5 AC/AWP/DP Ex. 7(A)

Rosemarie Kelley, Director

Office of Civil Enforcement

OECA

Message

From: Jonesi, Gary [Jonesi.Gary@epa.gov]
Sent: 7/17/2019 5:14:44 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: XPS General Conferencing Number: 1 (202) 991-0477 Conference ID 2188530 - 6/26/2019

See mtg notes below

Link to meeting notes: [XPS General Conferencing Number](#) **Ex. 6 Personal Privacy (PP)** [Web view](#))

Ex. 6 Personal Privacy (PP)

Wednesday, June 26, 2019
9:38 AM

Meeting Date: 6/26/2019 10:00 AM (started at 10:20, ended at 11:10)

Location: 3146 WJCS

Link to Outlook Item: [click here](#)

Invitation Message

Participants

- ☒ [Kelley, Rosemarie](#) (Meeting Organizer)
- ☐ [Porter, Amy](#)
- ☐ [Milton, Philip](#)
- ☐ [Holmes, Carol](#)
- ☐ [OECA-OCE-XPS](#)
- ☒ [Makepeace, Caroline](#) (Accepted in Outlook)
- ☒ [Kabler, Lauren](#)
- ☒ [OKeefe, Susan](#)
- ☒ [Fogarty, Johnpc](#)
- ☒ [Jonesi, Gary](#)
- ☐ [Smith-Watts, David](#)
- ☐ [Denton, Loren](#)
- ☐ [Sullivan, Greg](#)
- ☐ [Buterbaugh, Kristin](#)
- ☐ [Greenwald, Kathryn](#)
- ☐ [Williamson, Caroline](#)
- ☐ [Harned, Greg](#)
- ☒ [Binder, Jonathan](#) (Accepted in Outlook)
- ☐ [Fellus, Molly](#)
- ☒ [Koslow, Karin](#) (Accepted in Outlook)
- ☒ [Levandowski, Ryan](#)

Notes

AGENDA

1. Violation Correction – Status Update (Response to Kathleen’s Email and Draft Email to David/Susan/Henry) – Kabler
 - Touch base with Bodine
2. PACE - Kabler
 - Try to have only a couple of dockets in July, not 6 (e.g., Regions 1, 2, 4 and then 5 later) to test the process
 - RK: OK
3. Inspector Credentials Memo - Kelley raised
 - KK: changes reqmts for inspectors
 - Fogarty: need federal credentials to be state inspector
 - KK: will forward email to Kabler and she'll investigate if we submitted comments
4. Tribal - O’Keefe & Binder
 - a. Expedited tools guidance
 - WG efforts being reactivated; draft to RK/KK by 7/31, hope to talk to Bodine in August

a.

Ex. 5 AC/DP Ex. 7(A)

5. Audits – Jonesi
 - a. FAQs review status
 - 7/1 comments likely from KK

a.

Ex. 5 AC/DP Ex. 7(A)

6. EAB Permit Appeals Proposal (OECA IO reactions, next steps?) - Jonesi
 - GJ sent EPA org. history analysis to RK, KK, JF

1. SEPs - Makepeace

Ex. 5 AC/WP/DP Ex. 7(A)

Created with Microsoft OneNote 2016.

Message

From: Kabler, Lauren [Kabler.Lauren@epa.gov]
Sent: 4/3/2019 5:02:32 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: XPS General Agenda - comments by 5pm

I scheduled our meeting for next week so you really should take it off. We have a lot to discuss I think. Not sure if you were able to work through the email I sent you last night??

LAUREN V. KABLER
SPECIAL COUNSEL
OCE/IO/XPS
202-564-4052 (DESK)
202-368-5590 (CELL)

From: Porter, Amy
Sent: Wednesday, April 03, 2019 12:59 PM
To: Kabler, Lauren <Kabler.Lauren@epa.gov>
Subject: RE: XPS General Agenda - comments by 5pm

Yes, and I'm not sure if we will have time so I may need to take it off.

From: Kabler, Lauren
Sent: Wednesday, April 03, 2019 10:02 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General Agenda - comments by 5pm

I'm not comfortable doing PACE until you and I are on the same page and we have a chance to walk through the proposal. Agree?

LAUREN V. KABLER
SPECIAL COUNSEL
OCE/IO/XPS
202-564-4052 (DESK)
202-368-5590 (CELL)

From: Porter, Amy
Sent: Wednesday, April 03, 2019 10:00 AM
To: OECA-OCE-XPS <OECA-OCE-XPS@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
- 3) New O&G Program Applicability to Operators (Audit team, Susan, Caroline)
- 4) Tribal – do we need to catch her up on NTOC? Also, I'm hoping to have heard back from Region 8 on exactly what LEAN sessions RK needs to attend. Anything else?? (susan, JB)
- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today's meeting.

Amy Porter, Director

Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 7/29/2019 5:05:41 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]
Subject: Close hold - do not distribute - Draft SEPs State/Local Memo
Attachments: ENRD State and Local SEP Memo External Draft 1.docx

This is JClark's draft SEP memo. Larry originally sent it to Rosemarie, Caroline, John and me. Larry was okay with us sharing this with a few others, as needed, so I wanted you both to have this.

At this point, I do not plan to share it with anyone else. After we have more clarity on next steps, we may decide to share with Div Directors.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

Message

From: Kabler, Lauren [Kabler.Lauren@epa.gov]
Sent: 4/3/2019 10:44:23 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: revised XPS General Agenda

We can do it if you think we are simpatico. Did you send a revised? I thought you said you were making some changes but maybe I misunderstood?

On Apr 3, 2019, at 6:23 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Revised draft agenda:

- 1) PACE (if Lauren is in agreement that we are ready)
- 2) Tribal
 - a. White House Inquiry
 - b. NTOC Meeting
 - c. OITA Program Evaluation

I don't think we need to put the O&G operator issue on.

Comments?

From: Porter, Amy
Sent: Wednesday, April 03, 2019 10:00 AM
To: OECA-OCE-XPS <OECA-OCE-XPS@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
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- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today's meeting.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 4/29/2019 6:09:59 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: FW: SEP talking points
Attachments: Possible Talking Points for meeting with Jesse Pannucio 4 29 19 revised.docx

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Starfield, Lawrence
Sent: Monday, April 29, 2019 2:03 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: SEP talking points

Susan,

OCE had a number of good revisions to the draft talking points on SEPs. The revised memo is attached.

Larry

Message

From: OKeefe, Susan [OKeefe.Susan@epa.gov]
Sent: 4/15/2019 2:24:28 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: SEP Briefing Prep

Thanks for copying me on the plan for this!

From: Porter, Amy
Sent: Monday, April 15, 2019 10:02 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: SEP Briefing Prep

Caroline –

Ex. 5 AC/DP

Please let us know if any questions.

Amy

Cc:ing Susan O'Keefe who will be acting for me, Mark who will be acting for Rosemarie T-Th and Apple who will be acting for Rosemarie on Friday. As far as I know only Caroline (and John if he can make it) are actually attending the DOJ briefing but if anyone has any different info please let me know.

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 7/19/2019 8:52:10 PM
To: Carol Holmes (Holmes.Carol@epa.gov) [Holmes.Carol@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Smith-Watts, David [Smith-Watts.David@epa.gov]
Subject: DOJ SEP Memo

I did ask Rosemarie about sharing the DOJ SEP memo and she said that they had not inquired about sharing so at this point it is a close hold.

Sorry.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Appointment

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 7/17/2019 6:46:57 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: Accepted: Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo
Location: Rosemarie's office
Start: 7/17/2019 8:00:00 PM
End: 7/17/2019 8:30:00 PM
Show Time As: Busy

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 9/20/2019 12:33:41 PM
To: Binder, Jonathan [Binder.Jonathan@epa.gov]
Subject: Re: The Morning Headlines from InsideEPA.com -- September 20, 2019 - SEP Article

Thanks!!

Sent from my iPhone

On Sep 20, 2019, at 8:01 AM, Binder, Jonathan <Binder.Jonathan@epa.gov> wrote:

FYI - A top Justice Department (DOJ) official is considering additional "broader" limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA's upcoming lead and copper drinking water rule.

Jeffrey Clark, DOJ's assistant attorney general for the Environment & Natural Resources Division (ENRD), told *Inside EPA* on the sidelines of the American Bar Association environment fall conference in Boston Sept. 12, that the department continues to examine additional options for curbing defendants' use of such projects in settlements, as he had indicated in his *August* memo that dramatically limited SEPs for municipalities.

<https://insideepa.com/weekly-focus/doj-weighs-%e2%80%98broader%e2%80%99-sep-limits-new-policy-forces-renegotiations>

From: InsideEPA.com <insideepa-alerts@iwpnews.com>
Sent: Friday, September 20, 2019 7:15 AM
To: Binder, Jonathan <Binder.Jonathan@epa.gov>
Subject: The Morning Headlines from InsideEPA.com -- September 20, 2019



September 20, 2019

The Weekly Focus

DOJ Weighs 'Broader' SEP Limits As New Policy Forces Renegotiations

ED_004082K_00028913-00001

A top Justice Department (DOJ) official is considering additional “broader” limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA’s upcoming lead and copper drinking water rule.

Latest News

Agencies Defend Legal Basis For Scrapping California Auto GHG Waiver

EPA and the Transportation Department (DOT) are defending the legal basis for their just-issued rule revoking California’s power to set its own vehicle greenhouse gas limits, asserting the state is preempted by fuel economy law and lacks “compelling and extraordinary” conditions needed to receive such authority under the Clean Air Act.

Science Rule Schedule Slips As EPA Readies Supplemental, Wheeler Says

EPA Administrator Andrew Wheeler told the House science committee Sept. 19 that the agency’s schedule for issuing its controversial rule barring regulators from relying on scientific research that is not published has slipped as the agency is preparing to issue a supplemental proposal in early 2020.

Governors Press Congress To Back PFAS Measures In Defense Bill

A bipartisan group of 15 governors is pressing leaders of the House and Senate Armed Services committees to back measures in pending defense authorization legislation that would require EPA and the Defense Department (DOD) to set policies to regulate the chemicals, curb releases and clean up contamination from per- and polyfluoroalkyl substances (PFAS).

CARB Pledges To Enforce Current Auto GHG Rules Despite EPA Preemption

California Air Resources Board (CARB) officials say they will continue to enforce the state’s strict vehicle greenhouse gas standards during litigation over the Trump administration’s just-issued revocation of the state’s Clean Air Act preemption waiver allowing it to set its own requirements.

EPA, NHTSA Release Final Rule Revoking California Auto GHG Authority

EPA and the National Highway Traffic Safety Administration (NHTSA) have released the text of their final regulation revoking California’s authority to enforce auto greenhouse gas and zero-emission vehicle (ZEV) standards, with administration officials arguing the step is necessary to preserve a single set of national requirements.

Daily Feed

Trump says EPA to cite San Francisco over homeless pollution

The president’s remarks come as the White House is engaged in a heated confrontation with California over vehicle greenhouse gas standards.

EPA Gold King mine spill suits might see three-part trial starting in 2021

Litigation over the 2015 Gold King spill is not expected to go to trial until the summer of 2021 under a new plan that would split its ‘complex’ proceedings into three parts.

OMB completes review of proposed DOE mercury storage fees rule

The Energy Department’s proposed elemental mercury storage fees rule is part of a program to designate a facility for long-term storage of the substance under a 2008 law banning the export of mercury.

EPA, DOJ announce \$47 million pact with Hyundai over illegal engines

The government says that the vehicle manufacturer illegally “stockpiled” thousands of engines with outdated emission controls and later sold them in heavy construction equipment.

Ewire: EPA, DOT detail rule to scrap California auto GHG power

In today’s Ewire: The agencies’ rule will “help ensure there will be one, and only one, set of national fuel economy and greenhouse gas emission standards for vehicles,” they argue.

Environmentalists sue EPA over New Mexico stormwater

“We are disappointed that for years EPA has failed to take action to protect New Mexicans’ public health and environment and require that these toxic discharges be controlled and monitored.”

Environment Next

Interview

EDF Said Environmental ‘Crisis’ Requires Policies, Voluntary Programs

As the head of Environmental Defense Fund’s (EDF) business partnerships program, Tom Murray has seen industry’s trend toward sustainability grow significantly, including companies pursuing voluntary emissions cuts, use of safer chemicals, and a growing focus on addressing climate change.

States See Climate Programs Building ‘Infrastructure’ For Future Federal Plan

BOSTON -- State officials pushing aggressive green energy mandates and opposing EPA’s rule rollbacks see their programs as “infrastructure” for complying with future federal rules, echoing a belief from some Democrats and environmentalists that states will be unable to meet their climate goals without Democrats retaking the White House.

Read all the latest EPA news, analysis and documents →

EDITORIAL CONTACT

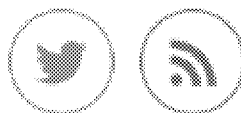
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Telephone: 703-416-8500 or 1-800-424-9068

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Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 5/15/2019 12:20:27 PM
To: Jonesi, Gary [Jonesi.Gary@epa.gov]
Subject: FW: CREO - Summary of 5/13/19 Call
Attachments: 2019-05-13 Meeting Summary.docx

Interesting discussion on SEPs. Ex. 5 AC/DP
Ex. 5 AC/DP DOJ will be discussing on Thursday's 1:00 call. Can you attend?

From: Jonesi, Gary
Sent: Tuesday, May 14, 2019 5:33 PM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>; Banwell, Peter <Banwell.Peter@epa.gov>; Beeler, Cindy <Beeler.Cindy@epa.gov>; Bieri, Britt <bieri.britt@epa.gov>; Burke, Susan <Burke.Susan@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Chabria, Monesh <chabria.monesh@epa.gov>; Chatfield, Ethan <chatfield.ethan@epa.gov>; Clouse, Matt <Clouse.Matt@epa.gov>; Connor, Garth <CONNOR.GARTH@EPA.GOV>; Critchfield, James <Critchfield.James@epa.gov>; Deborah Gitin (deborah.gitin@usdoj.gov) <deborah.gitin@usdoj.gov>; Denny, Andrea <Denny.Andrea@epa.gov>; DeYoung, Robyn <DeYoung.Robyn@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Fischer, Lauren <Fischer.Lauren@epa.gov>; Flynn, Bridget <flynn.bridget@epa.gov>; Freed, Elisabeth <Freed.Elisabeth@epa.gov>; Froikin, Sara <Froikin.Sara@epa.gov>; Gallagher, Shirin <Gallagher.Shirin@epa.gov>; Garvey, Melanie <Garvey.Melanie@epa.gov>; Gregory, John <Gregory.John@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>; Jouzaitis, Joan <jouzaitis.joan@epa.gov>; Klinger, Adam <Klinger.Adam@epa.gov>; Kodish, Jeff <Kodish.Jeff@epa.gov>; leslie.allen@usdoj.gov; Livingston, Peggy <Livingston.Peggy@epa.gov>; Lloyd, David <Lloyd.David@epa.gov>; Loutan, Reema <Loutan.Reema@epa.gov>; Ludwig, Victoria <Ludwig.Victoria@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Moskal, John <Moskal.John@epa.gov>; Mostaghim, Negin <Mostaghim.Negin@epa.gov>; Newman, Erin <newman.erin@epa.gov>; Ogle, Kimberly <Ogle.Kimberly@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Olson, Erik <olson.erik@epa.gov>; Page, Phil <Page.Phil@epa.gov>; Pappas, Alexander <pappas.alexander@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Quinones, Edwin <quinones.edwin@epa.gov>; Rehder, Timothy <Rehder.Timothy@epa.gov>; Riedel, Brian <riedel.brian@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Root, Kathleen <Root.Kathleen@epa.gov>; Seltzer, Mark <Seltzer.Mark@epa.gov>; Shatas, Angie <Shatas.Angie@epa.gov>; Sobel, Aaron <Sobel.Aaron@epa.gov>; Steele, Mariah <Steele.Mariah@epa.gov>; Thomas, Marc <Thomas.Marc@epa.gov>; Thrush, Dale <Thrush.Dale@epa.gov>; Wood, Nicole <wood.nicole@epa.gov>; Zevenbergen, Michael (ENRD) <Michael.Zevenbergen@usdoj.gov>
Subject: CREO - Summary of 5/13/19 Call

To: CREO Liaisons

Hi everyone. Thanks to those of you who participated in yesterday's monthly call. The 5/13/19 meeting summary is accessible several ways:

- via the [CREO SharePoint site](#);
- via the site's [Meeting Materials page](#);
- attached in Word format; and
- copied below for your convenience.

Thanks.

--Gary



Be kind to the environment.
Please do not print this email unless necessary.

Gary A. Jonesi
National Coordinator
Clean Renewable Energy Opportunities (CREO)
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Rm. 4102-C)
Washington, D.C. 20004

202-564-4002 (direct)
703-304-6392 (cell)
jonesi.gary@epa.gov

“Clean Renewable Energy Opportunities (CREO) in Civil Enforcement”
Meeting Summary – May 13, 2019

Participants:

| Organization | Liaison(s) | Other Contact(s) |
|--|------------------|------------------|
| Region 1 | Joan Jouzaitis | John Moskal |
| Region 2 | Sara Froikin | |
| Region 3 | | |
| Region 4 | | |
| Region 5 | Nicole Wood-Chi | Erin Newman |
| Region 6 | Ed Quiñones | |
| Region 7 | Clarissa Mills | |
| Region 8 | | |
| Region 9 | | Brian Riedel |
| Region 10 | Shirin Gallagher | |
| Office of Civil Enforcement (OCE) - Immediate Office | Gary Jonesi | |
| OCE - Air Enforcement Division (AED) | Jeff Kodish | |
| Fuels, Vehicles, Engines Enforcement | | |
| OCE - AED-Stationary Source Enforcement | | |
| OCE - Water Enforcement Division (WED) | | |
| OCE - Waste & Chemical Enforcement Division (WCED) | Negin Mostaghim | |
| OECA - Federal Facilities Enforcement Office (FFEO) | Melanie Garvey | |
| OECA - Office of Criminal Enforcement, Forensics, and Training (OCEFT) | John Gregory | |
| OECA – Office of Site Remediation Enforcement (OSRE) | Phil Page | |
| OLEM - RE Powering America's Land | | |

| | | |
|--|-------------------|-------------|
| OAR - Green Power Partnership | James Critchfield | |
| OAR - State & Local Energy & Environment Program | | |
| OAR - Voluntary/Regulatory EERE programs | | |
| OAR - Energy Star | | |
| OAR - Office of Transportation & Air Quality (OTAQ) | | Susan Burke |
| OGC - Air & Radiation Law Office (ARLO) | Howard Hoffman | |
| DOJ - ENRD - Environmental Enforcement Section (EES) | | |

Ex. 5 AC/DP

2. **Significant Developments:** Gary Jones summarized the following items:

a) **Industry Developments:**

- i) **Solar Power for Schools:** A [5/5/19 CleanTechnica article](#) reports on newly published research by Stanford's School of Earth, Energy & Environmental Sciences and published in the peer-reviewed journal *Environmental Research Letters*, touting the benefits of solar power for schools. The benefits include: (1) providing an alternative to cutting down trees to install PV panels; (2) offsetting school system energy expenditures; (3) reducing the school system's carbon footprint; and (4) teaching future generations about the value of clean renewable electricity.
- ii) **Repurposing Closed Coal Plants:** As noted in a [4/13/19 St. Louis Dispatch article](#), the owner of Southern Illinois coal power plants facing likely closure for economic reasons is supporting state legislation to help repurpose sites for utility-scale solar and energy storage projects. According to the operator, Vistra Energy (who bought Dynegy in 2018), the [Illinois Coal to Solar and Energy Storage Act](#) would provide a combination of [renewable energy credits \(RECs\)](#) and state-awarded grants as a way to more "responsibly transition" for plant employees, local communities, and the state's ambitious clean energy goals. [Vistra says](#) the concept would beneficially "reuse the substantial transmission infrastructure and available land at existing coal-fueled power plants" and estimates that "up to 2,000 construction jobs and support jobs" would directly be created through the process of repurposing its facilities. Some critics, including environmental groups, are pleased that coal companies are considering such repurposing but view the proposed legislation as a multimillion-dollar coal bailout that the public should not be asked to pay for given that market forces have caused such plants to become unprofitable.

b) State & Local Developments:

- i) **New York:** As noted in a [5/10/19 Climatewire article](#), New York State on 5/9/19 adopted [revised CO₂ emission standards on non-modified existing major electric generating facilities](#) which the State's two remaining coal-fired power plants reportedly cannot meet, effectively barring coal from the State's grid.
- ii) **Washington:** As noted in a [5/7/19 web posting](#), on 5/7/19 Governor Jay Inslee signed into law several clean energy bills that set "aggressive timelines for decarbonizing Washington's economy and transforming the state's energy landscape." Among other things, the legislation eliminates coal power, including "coal-by-wire" from out of state, by 2025, and it requires Washington utilities to transition to a carbon-neutral electricity supply by 2030 and puts the state on a path to entirely eliminate fossil fuels from electricity generation by 2045. It also provides grants and tax incentives for electric vehicles, converts its ferry fleet to electric and hybrid-electric ships, and improves building energy performance standards.
- iii) **Tennessee:** As noted in a [4/29/19 Renewable Energy World article](#), Tennessee's largest solar facility is now online. The 53-megawatt (MW) array in Millington is a partnership with independent power producer Silicon Ranch Corporation, the U.S. Navy, the Tennessee Valley Authority (TVA), and Memphis, Light, Gas and Water. Power from the project will go to Naval Support Academy Mid-South and TVA, providing the naval installation with a new alternative electrical feed that will

increase its energy security and resilience. Tennessee Governor Bill Lee praised the project, stating that, “Partnerships fuel innovation, and we are proud of the work by community leaders, the U.S. Navy, and Silicon Ranch to expand solar technology in West Tennessee. We look forward to a continued partnership as we strengthen rural Tennessee, modernize our infrastructure, and prepare for the jobs of the future.”

- iv) **California:** As noted in a [4/17/19 Energywire article](#), some homeowners fearful of more extreme weather and wildfire-induced power blackouts are adding solar PV panels and battery storage to their homes, and solar power companies are highlighting such resilience concerns in their sales messaging efforts in California, Puerto Rico, and other areas. As noted in a [4/19/19 Bloomberg Environment article](#), solar panels are considered hazardous waste in California and the State is trying to streamline the process of making disposal easier (while adding protective safeguards) to deal with panels that become broken or reach the end of their useful life. To do so, [California proposed regulations on 4/19/19](#) to treat PV modules as “universal wastes.”

Gary noted that EPA would be best served to incorporate end-of-useful-life disposition provisions in any solar, wind, or other settlements involving clean renewable energy equipment that must be properly recycled or disposed.

Jeff Kodish (OCE-AED) mentioned that Colorado Governor Jared Polis is expected very shortly to sign into law a bill passed by the Colorado legislature that would require greenhouse gas emissions to be reduced 26% by 2025, 50% by 2030, and 90% by 2050. Gary committed to updating the CREO Liaisons if/when the bill is enacted.

- c) **International Developments:** As noted in a [4/25/19 CNN article](#), a \$13.6 billion solar park is well under construction in oil-rich Dubai. In its eighth year of development, it already has 2.3 million photovoltaic (PV) panels with a capacity of 213 megawatts (MW), and the next phase will add over three million PV panels and 800 MW and should be completed in 2020. The 5,000 MW solar park is also expected to include the tallest concentrated solar power (CSP) tower in the world (at 853 feet). As with other CSP units, it will use mirrors (heliostats) to focus sunlight at the top of the tower, in order to heat up a flow of molten salts, which is used to power steam turbines and generate electricity, thereby allowing the 15 hours of stored heat to provide power 24 hours a day. When finished in about 2030, the project is expected to power as many as 1.3 million homes, reducing carbon emissions by 6.5 million tons annually.

d) **Executive Branch Actions:**

Statements from Senior Administration Officials:

DOE Secretary Rick Perry made the following statements in support of clean renewable energy:

- (1) [5/9/19: A tweet touting how “Innovation is Powering the New American Energy Era”](#) and prominently showing solar and wind facilities in a video.

- (2) 5/9/19: Numerous statements in support of clean renewables such as wind and solar during Testimony before the House Energy and Commerce Committee on DOE's 2020 budget request (e.g., at 43:49 and 1:30:30)
- (3) 4/25/19: In his remarks at the EarthX environmental conference in Dallas, Texas, he bragged (video at 3:20) about Texas leading the nation in wind power and said "what's true for Texas is true for this nation." He also said (video at 5:43) that "Now the first step [to make our energy even cleaner through innovation] is to take energy that is free of emissions and generate more of it. That includes renewables like solar and wind which are now more affordable and available than ever." As noted in a 5/2/19 CleanTechnica article, Perry also expressed support for coal, nuclear, and natural gas as vehicles for ensuring reliable energy as compared to intermittent sources like wind and solar but added support (video at 9:20) for research into energy storage to help such clean renewables become, in his view, as reliable as coal, nuclear, and natural gas.

FERC Chairman Neil Chatterjee made the following statements in support of clean renewable energy:

- 4/10/19: As noted in a 4/10/19 CNN article, in his remarks at the 2019 Columbia Global Energy Summit in New York, he stated (video at) that, "I believe climate change is real. I believe man has an impact . . . and I believe that we need to take steps to mitigate emissions urgently."

Ex. 5 AC/DP

5. **Adjournment:** Gary reminded everyone that the next CREO call is scheduled for June 10th at 3pm EDT.

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 4/15/2019 6:29:58 PM
To: Kabler, Lauren [Kabler.Lauren@epa.gov]
Subject: RE: Very Quick Turn-Around - Request from AA re: SEPs/Annual Results - Going Back Five years

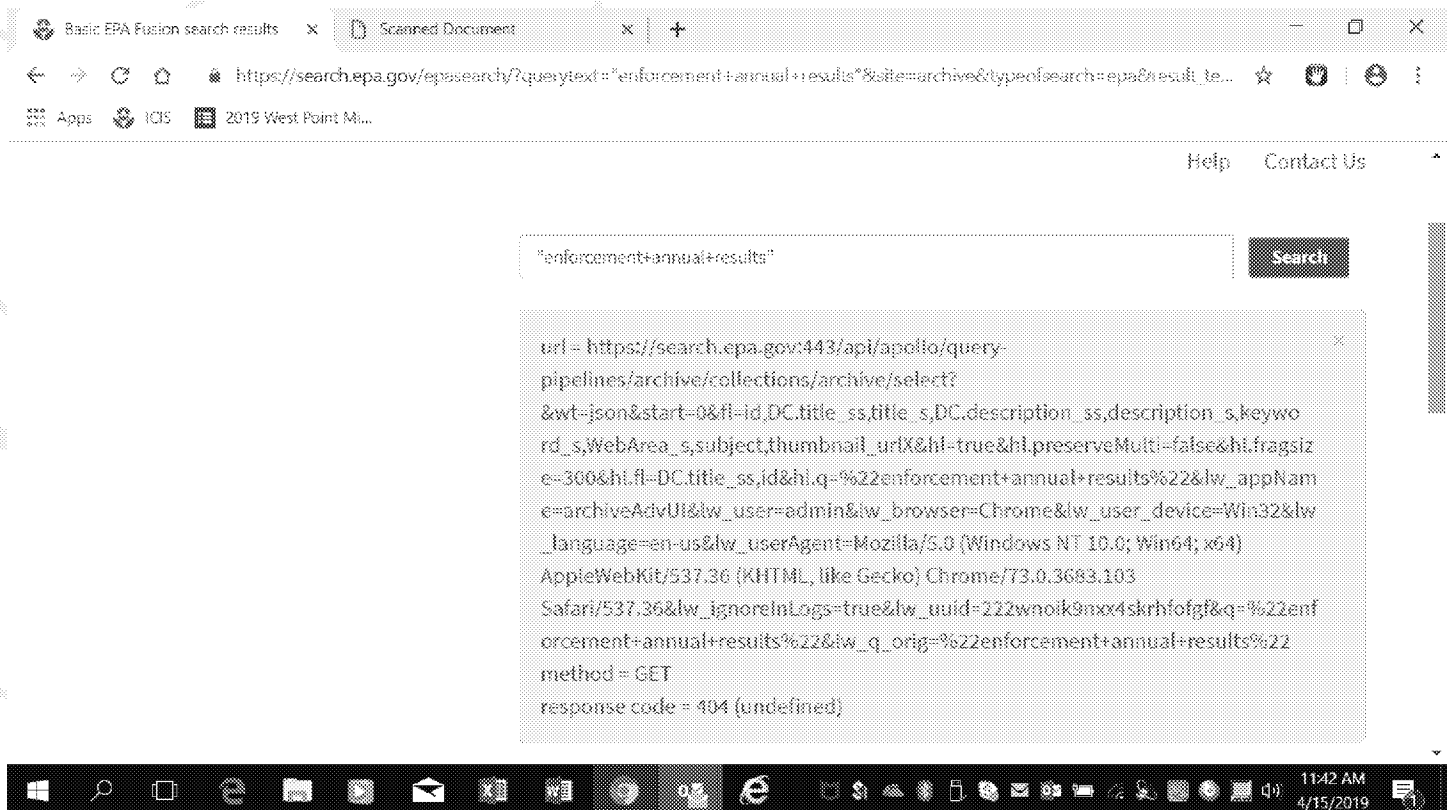
Thank you so much, Lauren!

From: Kabler, Lauren
Sent: Monday, April 15, 2019 11:46 AM
To: Ager, Sara <Ager.Sara@epa.gov>; Holic, Daniel <Holic.Daniel@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>
Subject: Very Quick Turn-Around - Request from AA re: SEPs/Annual Results - Going Back Five years

Sara and Dan – Caroline is preparing SEP briefing papers for Susan Bodine for a meeting later this week with DOJ management.

Ex. 5 AC/DP

Ex. 5 AC/DP



LAUREN V. KABLER
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OCE/IO/XPS
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202-368-5590 (CELL)

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Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 5/7/2019 3:04:23 PM
To: Amy.Porter [Porter.Amy@epa.gov]
Subject: **Ex. 5 AC/DP**

Ex. 5 AC/DP

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431